

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD BENNETT,

Plaintiff ,

v.

GREENSKY TRADE CREDIT LLC;  
BATH PLANET OF CENTRAL NEW JERSEY;  
NATIONWIDE BUILDING AND REMODELING,

Defendants

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: Civil Action No.

**COMPLAINT**

**I. Introduction**

This is an action by a homeowner seeking relief from a predatory home improvement mortgage loan under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. (“CPL” or “UDAP”). The loan was solicited by defendants Nationwide and Bath Planet, assigned to GreenSky. Plaintiff seeks equitable relief in the form of voiding or rescission of their mortgage and actual, statutory and punitive damages, together with attorneys fees and costs as well as state law remedies.

**II. Parties**

1. Plaintiff RICHARD BENNETT is an individual residing at 115 Spring St., Media, PA 19063 [hereinafter the “Property”].

2. Defendant GreenSky Trade Credit, LLC [hereinafter “Assignee”] is a limited liability corporation with a principal office address of 1797 Northeast Expressway, Suite 100, Atlanta, GA 30329 and is engaged in the business of consumer lending and purchase of consumer lending contracts in the Commonwealth of Pennsylvania and elsewhere.

3. Defendant NATIONWIDE BUILDING AND REMODELING is a home improvement contractor with offices at 118 Amelia Drive, Levittown, PA 19054.

4. Defendant BATH PLANET OF CENTRAL NEW JERSEY is a home improvement contractor with offices at 118 Amelia Drive, Levittown, PA 19054.

5. Defendant GreenSky is a creditor within the meaning of TILA.

### **III. Factual Allegations**

6. Prior to the loan hereinafter described, plaintiff was seeking renovations to his home in order to sell it having become unemployed and no longer able to afford said property.

7. On or about October 2014, plaintiff contacted defendant Nationwide whose salesman Pat Durnin visited the property and presented plaintiff with an invoice for work to be performed and discussed with the plaintiff work to be performed on the home to receive appropriate certifications from Middletown Township.

8. Nationwide placed Plaintiff on the phone with GreenSky who, after taking his social security number, address, and name information advised him that he was approved for a 15,000 dollar loan.

9. Plaintiff never signed a credit application or other financing documents.

10. Nationwide advised plaintiff that the total cost of the work would be no more than two to three thousand dollars.

11. On or about November 14, 2014, Nationwide presented plaintiff with the two invoices, one for \$5,500 dated 11/14/14 and one dated 12/2/14 for approximately \$10,000 (see Ex. "A").

12. Nationwide promised plaintiff it would arrange financing to pay for the

improvements plaintiff desired.

13. Unknown to plaintiff, Nationwide failed to gain the necessary permits to complete the work specified in the invoice.

14. Nationwide performed the work only partially and in substandard manner which has prevented the home from receiving the appropriate certifications and exposing plaintiff to fines and penalties as a result thereof.

15. Unknown to plaintiff, Nationwide and/or Bath Planet by and through its agents and or employees falsified financial and credit information required by GreenSky for assignment of the home improvement financing contract including but not limited to misrepresenting plaintiff's income as \$5,000 monthly while he was unemployed.

16. Defendants failed to provide plaintiff with any document describing the terms of financing for the loans before at or after disbursements of loan proceeds to defendants Nationwide and/or Bath Planet.

17. Upon information and belief, GreenSky has advanced \$15,902.73 in separate monthly payments directly to home improvement contractors Nationwide and Bath Planet without regard to approval by plaintiff of the work performed or other confirmation of its performance or quality.

### **III. Plaintiff's Causes of Action**

#### **COUNT I - TILA RESCISSION**

18. Plaintiff incorporates herein all prior paragraphs of this Complaint.

19. The loan was a residential mortgage loan subject to the Plaintiff's right of rescission as described by TILA, 15 U.S.C. § 1635 and Regulation Z § 226.23 (12 C.F.R. § 226.23).

20. Defendant GreenSky failed to deliver all “material” disclosures required by TILA for reasons including but not limited to failing to provide the notice of a high interest loan three (3) days prior to the closing as required by 15 U.S.C. §1639(b)(1).

21. Defendant GreenSky failed to deliver all "material" disclosures required by TILA and Regulation Z. The disclosure violations include, but are not limited to:

- a. Failing to properly and accurately disclose the "amount financed," using that term in violation of Regulation Z § 226.18(b) and 15 U.S.C. § 1638(a)(2)(A);
- b. Failing to clearly and accurately disclose the "finance charge," using that term, in violation of Regulation Z §§ 226.4 and 226.18(d) and 15 U.S.C. § 1638(a)(3);
- c. Failing to clearly and accurately disclose the "annual percentage rate," using that term in violation of Regulation Z § 226.18(e) and 15 U.S.C. § 1638(a)(4); and
- d. Failing to comply with the special disclosure requirements of §226.32.

22. Additionally and/or alternately, the Line of Credit with Defendant GreenSky was a spurious open-end credit transaction pursuant to Regulation Z § 226.2(a)(20) because there was no approval or inspection of the work performed at any established time intervals either by plaintiff or independent confirmation to support the work or its performance in installments.

23. Accordingly, creditor assignee GreenSky could not have reasonably contemplated any real repeated transactions under the Line of Credit. Rather, distribution of the full credit line was mere artifice to disguise that the loan was for a sum certain

established at the outset of the transaction by agreement among the defendants.

24. Therefore, in reality, the Line of Credit was a closed-end residential mortgage loan subject to the Plaintiff's right of rescission as described by TILA, 15 U.S.C. § 1635 and Regulation Z § 226.23 (12 C.F.R. § 226.23).

25. Based on the foregoing, Plaintiff has a continuing right to rescind the transaction until receipt of all "material" disclosures described above, pursuant to 15 U.S.C. § 1635(a) and Regulation Z § 226.23(a)(3).

**COUNT II - PENNSYLVANIA CONSUMER PROTECTION LAW/  
FRAUD**

26. Plaintiff incorporates herein all prior paragraphs of this Complaint.

27. The loan transaction between plaintiff and Green Sky, and the home improvement sale contract transaction between plaintiff and Nationwide constitute trade and commerce within the meaning of the Unfair Trade Practice and Consumer Protection Law (UTPCPL), 73 P.S. § 201-2(3).

28. The loan, as set forth above, was initiated with a home improvement contractor and a home improvement financing contract, and, as such, the loan transaction constitutes a home improvement installment contract under 73 P.S. §500-200 et seq., the Home Improvement Finance Act (HIFA).

29. By operation of Pennsylvania's Home Improvement Finance Act (HIFA) Green Sky is the holder of a home improvement sales contract and liable for the actions of the home improvement contractor, Nationwide and/or Bath Planet.

30. Green Sky is also the assignee of a home improvement loan contract and, under common law principles of assignee liability, is liable for the actions of the home improvement contractor, Nationwide and/or Bath Planet.

31. Nationwide and/or Bath Planet made the following misrepresentations to plaintiff in its making and settlement of the loan:

- a) Misrepresented that plaintiff had consented to over \$15,000 in repairs.
- b) Misrepresented that plaintiff had consented, in writing or otherwise, to financing of the loan with anyone including GreenSky.
- c) Misrepresented that it intended to gain permits to perform the electrical and other work in conformity with local government requirements when it did not.

32. For the foregoing reason, Nationwide and/or Bath Planet was an agent for GreenSky in originating the home improvement loan, and Green Sky is therefore liable for the conduct of Nationwide and/or Bath Planet.

### **COUNT III – CONSPIRACY TO COMMIT FRAUD**

33. Plaintiff incorporates herein all prior paragraphs of this Complaint.

34. The defendants conspired with one another, substantially contributed, substantially assisted and acted in concert with each other in the misconduct described above to their mutual economic benefit by falsifying credit documentation, failing to create, request or demand documentation and approval from plaintiff of the scope of the home improvement work or the performance or quality of any part thereof prior to disbursement of loan funds.

35. Green Sky, Nationwide, and Bath Planet had knowledge of their respective overt acts, omissions, evasions, and concealments, which have contributed to plaintiff's damages and losses.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendants for the following:

A. As a result of the violations of the Act and Regulation Z, pursuant to 15 U.S.C.

§§1635(a) and 1640(a), Defendant Greensky is liable to Plaintiff for damages of:

- a) rescission of this transaction, including a declaration that Plaintiff is not liable for any finance charges or other charges imposed by Defendant;
- b) termination of any security interest in Plaintiff's property created under the transaction;
- c) return of any money or property given by the Plaintiffs to anyone, including the Defendants, in connection with this transaction;
- d) statutory damages of \$4,000 for failure to rescind pursuant to the requirements of 15 U.S.C. §1635(b);
- e) HOEPA statutory damages in the amount of finance charges for the loan pursuant to 15 U.S.C. §1640.
- f) actual damages in an amount to be determined at trial;
- g) an award of reasonable attorney's fees and costs.

B. For fraud and violation of the UTPCPL, Plaintiff demands of defendants jointly and severally:

- a) Void or, in the alternative, equitably rescind Green Sky's mortgage interest for fraudulent acknowledgment and/or violation of HIFA;
- b) Actual damages in the amount of funds stolen from the loan or for which plaintiff received no benefit;

- c) Actual damages of total monthly payments to Green Sky under the loan;
- d) Treble damages under UTPCPL or, in the alternative, punitive damages for fraud;
- e) Reasonable attorney fees and costs as allowed by 73 P.S. § 201-9.2.

Dated: February 27, 2015

RC935

ROBERT P. COCCO, P.C.

Pa. Id. No. 61907

1500 Walnut Street - Suite 900

Philadelphia, PA 19102

(215) 351-0200

Matthew Weisberg, Esquire

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Morton, PA 19070

(610) 690-0801

Attorneys for Plaintiff



EXHIBIT "A"

# PROPOSAL

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## Nationwide Building & Remodeling

Quality & Reliability Since 1955

866-946-1200

Proposal Submitted to:

Richard Barnett		Phone	Date 12-2-14
115 Spring St.		Job Name	
Medic, PA 19063		Job Location	
Architect	Date of Plans	Job Phone	

We hereby submit applications and estimates for:

Repairs (Plumbing) + (Electric for panel)

- Repair as needed exterior ground rod
- Repair / replace circuit box - breakers to bring up to code
- Repair spaces in between w/ broken boxes & dead electric lines change fuses
- Repair circuit as needed to access wiring for 2nd floor
- Repair 2nd floor to bring up to code
- Re-install, tape, splice & seal to paint vent pipes
- Paint exterior area (if exterior walls are 2nd floor painted)
- termite treatment

**We Propose** hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Provide electrical certificate & load report dollars (\$ \_\_\_\_\_).

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be done only upon written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases or additional labor and materials which may be required should unforeseen problems arise after the work has started. Our workers are fully covered by Workmen's Compensation Insurance.

**Acceptance of Proposal:** The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance:

Authorized Signature \_\_\_\_\_

Note: This proposal may be withdrawn by us if not accepted within \_\_\_\_\_ days

NOTICE: You the purchaser may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**PROPOSAL**

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# Nationwide Building & Remodeling

Quality & Reliability Since 1955  
866-946-1200

Proposal Submitted to: <u>Richard Howard</u>		Phone	Date: <u>12-2-14</u>
Street: <u>115 Spring St.</u>		Job Name	
City, State and Zip Code: <u>Malden, MA 02148</u>		Job Location	
Architect	Date of Plans	Job Phone	

We hereby submit applications and estimates for:

- Repairs (Electrical) + (House Wiring)
- Repair ground water damage
  - Repair as needed outside ground rod
  - Repair/replace circuit box & breakers to bring up to code
  - Repair splices in basement w/ Junction boxes & feed electric lines through joists
  - Repair damage as needed to access wiring for 2nd floor
  - Remove 2nd floor to bring up to code
  - Re-sheath, tape, spackle & sand to paint ready finish
  - Paint repair area (this work will be an additional charge)
  - Termite treatment - 100%

**We Propose** hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Provide electrical certification + code report dollars (\$ 1750.)

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any retention or deviation from the above specifications involving extra costs will be done only upon written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon success, accidents or delays beyond our control. The estimate does not include material price increases or additional labor and materials which may be required should unforeseen problems arise after the work has started. Our workers are fully covered by Workmen's Compensation Insurance.

**Acceptance of Proposal:** The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Note: This proposal may be withdrawn by us if not accepted within \_\_\_\_\_ days.

NOTICE: You the purchaser may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**PROPOSAL**

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**Nationwide Building & Remodeling**

Quality &amp; Reliability Since 1955

866-946-1200

Proposal Submitted to: <i>Richard Darnell</i>		Phone: <i>(215) 916-5221</i>	Date: <i>11-17-14</i>
Street: <i>115 Spring St.</i>		Job Name:	
City, State and Zip Code: <i>19054 PA</i>		Job Location:	
Architect: <i>for</i>	Date of Plans: <i>11-17-14</i>	Job Phone:	

We hereby submit applications and estimates for:

*Repairs**(1) Repair terrace steps as needed for set of three (5" x 10" x 12" concrete blocks)**(2) Remove existing Fire Place Support and install (2) steel columns with 6" x 6" wooden beams**(3) Make necessary adjustments to stone chime (bring up to level) (Set back 1/2" over the fire)**(4) Install stone support for table (approx. 12" x 12" x 12")***We Propose** hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:*\$5300.00* dollars (\$ *5300.00*).

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be done only upon written change order. The costs will become an extra charge over and above the estimate. All elements of this agreement are contingent upon strikes, accidents or delays beyond our control. The estimate does not include material price increases or additional labor and materials which may be required should unforeseen problems arise after the work has started. Our workers are fully covered by Workmen's Compensation Insurance.

**Acceptance of Proposal:** The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: *11-17-14*Authorized Signature: *[Signature]*

Note: This proposal may be withdrawn by us if not accepted within \_\_\_\_\_ days.

NOTICE: You the purchaser may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction.

Signature: *[Signature]*Signature: *[Signature]*